

## **Report to the 61st Session of the Montana Legislature Regarding Senate Joint Resolution 7**

### **Workgroup Formation**

In September of 2007, Director Joan Miles, Department of Public Health and Human Services (DPHHS) (Department), contacted all those who were listed on the attendance sheet for the SJ 7 hearings as well as other parties that the DPHHS believed may have an interest in this issue. Director Miles asked those interested in participating in a workgroup to respond to her in writing expressing the interest and willingness to participate. Of the response, a group of 15 was chosen, including representatives from the provider associations, provider community, consumers, citizens' advocacy groups, and area business group representatives. Please see Attachment A for members of the workgroup and their affiliations. The first workgroup meeting convened on October 23-24, 2007. Subsequent meetings were convened on December 4-5, 2007, February 20-21, 2008, and April 9-10, 2008. The department provided two opportunities, July 21, 2008, and August 4, 2008, for the workgroup to review and comment on the draft report.

The meetings were publicly noticed, placed on the State electronic calendar, and invitations were sent to interested parties of the public. Minutes from the meetings are found at Attachment K. Throughout the process, verbal and written comments from the public were received and considered by the workgroup. Providers of services who may be affected by the resolution were surveyed regarding their current practices of screening applicants for employment.

Members of the workgroup and members of the public recognized the reason for this resolution, and the current trend to protect society's vulnerable population in government sponsored or supported programs and services. The guiding principle of this workgroup was to protect the overall safety of the state's most vulnerable residents.

A discussion during the first meeting of this diverse workgroup illustrated both the need and the reluctance for this study and any proposed legislation that may result. The workgroup agreed that while they have different professional backgrounds and responsibilities, they are all consumers of services that, at one time or another, involve direct-care workers.

- A volunteer public member of the group recounted stories of abuse related to not only physical abuse and intimidation by a home care worker, but also financial exploitation of a senior in her community.
- Another member of the group has worked extensively with seniors and other vulnerable populations. She explained her interest in being part of the workgroup as personal and professional. She has heard directly from many seniors who have suffered abuse at the hands of health care workers.
- Several members of the group discussed their past attempts to be part of unsuccessful legislative efforts to require background checks for health care workers.
- A legislator member of the group offered insights from a legislative viewpoint. Any legislation needs to be clear and direct with an unquestionable link to public safety.

- A nurse in the group discussed her experience with nursing home residents and employees alike. She believes the issue is "huge" and "important" but how it is executed "needs to be decided carefully."
- Members from the business community were also present to express their concerns about rising costs. The labor market is tight in Montana, and this additional requirement could make hiring in these settings more difficult than it already is. Other members of the business community discussed concerns about the potential financial impact on business owners.
- Provider and association representatives discussed the history of legislative attempts to address the issue of background checks as a means to protect Montana's most vulnerable population. Everyone agreed that at face value, it appears simple, but once the layers are peeled back, the issue becomes complex and controversial.
- Again, the group was in agreement that protecting the public is vital to the Department's mission, and protecting the most vulnerable members of the public is a critical starting point. Several members urged the group to start small with a proposal that could pass the legislative process and work on it in subsequent years to include more than just the most vulnerable.

Responding to the charges in SJ 7 to develop a proposal "that would require an applicant seeking employment as a direct-care staff person in a program or service that is provided, funded, or regulated by the Department of Public Health and Human Services to undergo a criminal background check, using fingerprints, through the Federal Bureau of Investigation as a condition of employment", the workgroup addressed the six provisions of the resolution as follows:

- (1) identified programs and services for which criminal background checks should be required;
- (2) specified the direct-care staff positions for which criminal background checks should be required;
- (3) provided a detailed process and timeline for collecting an applicant's fingerprints, submitting them to the FBI and distributing appropriate information to employers;
- (4) established a specific list of relevant crimes that would exclude a convicted applicant from employment as a direct-care staff person;
- (5) established an appeals process for applicants who are denied employment because of the results of a background check; and
- (6) determined the estimated cost and sources of funding for implementing the system of criminal background checks outlined in the proposal.

While the workgroup did not agree on every issue, this report summarizes its work and its proposal to the Legislature. This proposal is meant to be a first step in protecting Montana's most vulnerable populations and legislation would be needed to implement this as public policy for Montana. An evaluation of any implementation will be vital to the success of this effort.

## **Background**

During the 1990's, the nation was becoming more proactive in dealing with the subject of health and health care facilities. Until about ten years ago, data regarding abuse in health care facilities was sparse at best. One of President Clinton's Presidential Initiatives was the prevention of abuse to residents of nursing homes. This national focus on preventing elder abuse concentrated on education for survey staff, direct-care staff, and the public as well as encouraging relationships among government agencies that have a regulatory and enforcement interest in the abuse of vulnerable populations and requiring a database to collect statistics regarding abuse in nursing homes. A vulnerable person is one who lacks the functional, mental, or physical ability which affects the person's judgment or behavior to the extent that they lack sufficient understanding or capacity to make, communicate, or implement decisions regarding care and the person is unable to protect him/herself from abuse, neglect, or exploitation. Using evidence based practice, the Seven Protocols for Abuse Prevention<sup>1</sup> were developed and are included in the federal interpretive guidelines for surveying nursing homes, hospitals, and Intermediate Care Facilities for persons with Mental Retardation (ICF/MRs).

This change in federal guidelines was the beginning of an awareness of the problem and a motivating factor for states to address the problem in their own fashion. Many responded by enacting state legislation requiring some type of background check for staff in a variety of health care settings.

Montana has seen several legislative attempts to require criminal background checks for those working with vulnerable populations. In 1999, HB 590 proposed background checks for certain school employees; the bill died after returning to the first house with amendments. A similar bill was drafted but never proposed for the 2001 session. It would have authorized the Superintendent of Public Instruction to require fingerprint background checks for teacher, administrator, and other school employee applicants. In the 2003 session, two bills regarding background checks were introduced. SB 32 revised background checks for state lottery employees to meet FBI criteria; it passed both houses and was codified. SB 328 proposed requiring background checks for employees in drop in day care centers; it failed in Committee.

The 2005 legislative session heard SB 357 which would have required background checks for social worker and professional counselor license applicants. The bill died in Committee, but a similar bill was introduced in the 2007 session (SB 342), and it passed. Clinical social workers, professional counselors, and private security guards are the only licensed professionals required to have fingerprint background checks at this time.

---

<sup>1</sup> The seven protocols for abuse prevention: screening, training, prevention, identification, investigation, protection, and reporting/response. (Guidelines §483.13(c), F226)

### **Surrounding States Stand on the Issue**

Idaho, Oregon, Utah, and Washington require varying types<sup>2</sup> of background checks for direct-access health care staff. North Dakota, South Dakota, Colorado, and Wyoming do not require a background check at this point in time.

The workgroup queried a number of states on the number and percentage of individuals who were disqualified for employment in a health care facility based on background checks. Each state queried had different disqualifying events, and some states do not track the number or percentage of applicants who are disqualified. Most of the states that responded reported an applicant rejection rate of 1% to 3%. Oregon was the highest at 30%, and Oregon has the most extensive list of disqualifying events.

The workgroup also collected data regarding appeals processes related to the background checks they received that contained disqualifying events for their states. Collecting information from nine states (Alaska, Arizona, Idaho, Kansas, Minnesota, Nevada, New Mexico, Oklahoma, and Oregon), the group learned that seven of the nine have an identified appeal process. (Please see Attachment E). Of these seven, three states limit the appeal to crimes which fall outside the state's identified permanent disqualifiers; four states use a committee structure to determine if an appeal will be granted, and the other three states use a Commissioner or other department staff to make a determination on the appeal; one state limits appeals to areas concerning their central abuse registries. Two other states limit the appeal process to the accuracy of the criminal record only.

Of the states that maintain statistics on the number of appeals, the percentages of appeals of total number of applicants who were disqualified ranged from less than 1% (Alaska) to 80% (Arizona). The other states ranged from 6% to 40%. Attachment H shows a state summary of current practice across the country.

### **Resolution Points Addressed: (each number refers to the number in the resolution)**

#### **(1) Identify the programs and services for which criminal background checks should be required;**

The workgroup spent several hours in several meetings discussing this issue. The Department provides, funds, or regulates almost 300 programs or services. While the workgroup was cognizant of the reasons for including almost all of the programs and services, the group did not want to include so many as to make this undertaking unmanageable at its conception. The group considers the proposed list of programs and services a first step in ensuring the safety of all Montana citizens who receive any services

---

<sup>2</sup> ~ Idaho Fingerprint, FBI, and Idaho State Police

~ Oregon Search: name, SSN, DOB in-state only; various state registries; if applicant self discloses or indicates out-of-state resident or identity in question, then FBI check

~ Utah Check of state registries name based; if lived in state < 5 years, FBI fingerprint check

~ Washington Named based and DOB for in-state search for Long Term Care, boarding home (Assisted Living Facility), and adult family home. For home and community based services, an in-state name/DOB check if applicant lived in state > 3 years. FBI check if applicant lived in state < 3 years. Also check of local data bases for substantiated reports of abuse and neglect

funded or regulated by DPHHS. A complete list is found under the definition for service setting on page 19 of this report.

**(2) Specify the direct-care staff positions for which criminal background checks should be required;**

Again, the workgroup spent several hours in several meetings discussing the definition of a direct-care worker and which direct-care workers would be subject to the checks.

While the workgroup was cognizant of the reasons for including almost all health care workers who have any access to patients, residents, and clients, the workgroup did not want to specify and define each position by name or title. The workgroup felt that each employer may have different names or titles for similar positions. To include names or titles for employers would have made this project costly and difficult to implement in a timely fashion. The workgroup considers the proposed definition of workers a first step in ensuring the safety of all vulnerable Montana citizens who receive any services funded or regulated by DPHHS.

The workgroup heard from Department of Labor and Industry personnel who work with professional licensing boards. Currently, the licensing boards (under Title 37, MCA) have authority to require background checks of licensees. The workgroup believes at least all nurses who work in these settings should have checks, but the workgroup preferred to make the background check independent of the professional licensure process. The workgroup wanted DPHHS to retain oversight over the disqualifiers and their application through administrative rules. In many cases, licensing boards support having licensees with criminal convictions in the work force on a probationary status. One reason is that the licensee has devoted considerable financial and other resources to obtaining the license. Second, Montana has a shortage of health care providers, and third, for many with criminal offenses related to drugs, the test of whether the licensee will succeed or not comes with employment in the field. Thus, the focus of the licensing boards is different than the focus of this workgroup. The licensed individuals with criminally disqualifying events are still employable in their fields; they might not be able to work in these designated settings.

Provision of the fingerprint background check for licensed individuals who do not have an employment relationship with either the health care facility or through a private arrangement with the client, patient, or resident will be addressed through the administrative rulemaking process.

Based upon a collaborative process the workgroup achieved consensus on the following definitions:

*"Direct-care access employee"* means a person, 18 years of age and older, who has employment or contractual relationship with a service setting that is funded or regulated by the Department and involves direct contact with a vulnerable person. Such term does not include an individual that is employed or providing services through a private arrangement with a vulnerable person or their designated representative.

*"Vulnerable person"* means a person who receives services as defined in this "Act" and who needs to be protected from abuse, neglect, or exploitation.

*"Direct contact"* means physical access to persons receiving services or that person's personal property.

*"Service setting"* for the purposes of this "Act" means those programs or services that the legislature has determined to represent the greatest risk to the health, safety, and welfare of vulnerable persons served by the Department. The definition includes service settings defined in statute and administrative rule and found in Attachment B.

- Youth Care Facilities
- Community home for persons with severe disabilities - Group Homes for Developmentally Disabled or Physically Disabled
- Adult Day Care
- Adult Foster Care
- Assisted Living Facilities
- Critical Access Hospitals
- Home Health Agencies
- Hospice
- Hospitals (Including inpatient psychiatric services) Montana State Hospital
- Inpatient Chemical Dependency Centers
- Intermediate Care Facility for the Developmentally Disabled
- Mental Health Centers
- Nursing Facility (Nursing Homes), (LTC), (Veteran's Homes), (Montana Developmental Center), (Montana Mental Health Nursing Care Center), (Transitional Care Unit)
- Residential Treatment Facility (RTF)
- Home and Community Based Services (HCBS)
- Personal Care Services

The workgroup could not come to consensus on the volunteer category of workers. Many volunteers perform work that might otherwise be a paid service. Many volunteers also spend considerable periods of time alone with this vulnerable population. The workgroup heard from a variety of employers, organizations, and associations that requiring background checks for volunteers would seriously limit their ability to secure this necessary worker category, and thus increase their cost for paid staff or limit the amount of service they could provide to a community. The category is not in this proposal, but the workgroup respectfully requests that the legislature considers the pros and cons (Attachment J) of the issue and decide accordingly.

**(3) Provide a detailed process and timeline for collecting an applicant's fingerprints, submitting them to the Federal Bureau of Investigation, and distributing appropriate information to employers;**

A representative for DOJ was present at all workgroup meetings. Additionally, a DOJ staff person provided a presentation on types of background checks which included cost, accessibility, and timelines. The workgroup reviewed all types of background checks because cost, reliability, and thoroughness are all factors driving this proposal.

This proposal focuses on the directive of SJ 7 to prepare a study report utilizing fingerprints. The resolution identified a fingerprint process through the Federal Bureau of Investigation, but the study results identified another alternative resource that is equally effective. That resource is a fingerprint check process through the Western Identification Network (WIN).

A name based background check can be completed for as little as \$10; this check can be completed within a few days. This check is limited by the information supplied by the applicant. Not divulging aliases or other pertinent information may limit the accuracy of this type of check.

An eight state Western Identification Network (WIN) background check based on fingerprints can be completed for \$10 plus the cost of obtaining fingerprints; this check can usually be completed within 7 to 10 days. WIN is a consortium of state and local law enforcement agencies that have implemented a shared network and Automated Fingerprint Identification System (AFIS) processing service to provide the ability to search the criminal fingerprint records of the member agencies. WIN member agencies include Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. A WIN check is limited to the states within the agreement. If an applicant committed a crime in another state, the information would not be available on this report.

A national FBI background check can be completed for \$29.25 plus the cost of obtaining the fingerprints. The cost of obtaining fingerprints can vary from \$5.00 to \$40.00 depending on where the fingerprints are taken. This check is the most thorough, and since it identifies by fingerprints, instead of name or any other identifiers, the check is the most accurate for a positive identification. The DOJ can accomplish these checks within 7 to 10 days. This function is covered under state special revenue and the fee supports the program. DOJ believes that they would be able to handle an increased workload by hiring more staff.

For the purposes of this study and the cost analysis under provision (6), we used an estimated cost of \$20.75 for obtaining fingerprints, resulting in an estimated cost of \$50.00 for an FBI check and \$30.75 for a WIN check.

Fingerprint checks are considered the most thorough and accurate since it identifies an individual by fingerprints, instead of name or any other identifiers. Therefore, if an applicant demonstrates residency within one of the WIN states the fingerprint check will be limited to the WIN states. If the applicant has lived in a state other than those in WIN, an FBI fingerprint background check will be required. The process would utilize enhanced resources and capabilities of DOJ with proper training of providers and instructions for the program. A proposed process is outlined in Attachment C.

In order to identify what providers are currently doing regarding background checks, the Department conducted an informal survey of employers from the identified service settings of direct-care access workers. The survey could be completed online or on paper. Results were collected for four weeks, and the survey revealed that most employers are already performing some type of background check. Again, the survey was not scientific; however, almost 87% of all who responded reported that their facility performs some sort of background check on all employees at least at the time of hire. The percentage of employers that provide the check increased with the size of facility. All facilities with more than 250 beds reported performing background checks on new hires. The type of checks performed varies from a simple Internet check of the name, to full fingerprint checks. Most use the DOJ's name based check. Many use a private company to check on background information that includes not only criminal information but also driving records and credit checks. A few facilities indicated that if a fingerprint check became mandatory for new hires, their facility might continue to use a private company for information such as driving records and credit information. Nothing in this proposal would preclude the employer from continuing that practice.

**(4) Establish a specific list of relevant crimes that would exclude a convicted applicant from employment as a direct-care staff person;**

The workgroup gathered information from 10 states regarding disqualifying events which prohibit working within the designated programs or services within the respective states. Comparisons were made among the 10 states, and then the workgroup carefully considered the needs of Montana as they developed the proposed final list. A subgroup of the workgroup met via conference call to narrow the list of disqualifiers to those crimes which they believed put the vulnerable populations at most risk for harm. The subgroup then presented this narrowed list to the full group for their consideration, discussion, and consent. At that point, the group asked DPHHS and DOJ staff to review the list and make a proposal for Montana disqualifying events. The workgroup felt they were not qualified to complete this detailed analysis given the required legal resources needed and time, DPHHS and DOJ completed this analysis and the final list was presented to the group at their April meeting, and it was accepted.

The group determined that the attached list (see Attachment D) of identified offenses were the relevant crimes and disqualifying events that would affect a convicted applicant when seeking employment as a direct-care staff person. The offenses were identified as felony or misdemeanor and further categorized into permanent disqualifying offenses, aged out offenses (offenses that would disqualify an applicant for a period of time after the offense was adjudicated), and offenses that were not considered. Applicants convicted of a permanent disqualifier event are not eligible for employment as a direct-care staff person. An applicant convicted of an aged out offense would be eligible for employment as a direct-care staff person after the designated time period has passed. After that time, the prospective employer would be told that the applicant had a disqualifying event that had timed out. At that point, the decision to hire the applicant will lie with the employer.



It is proposed that permanent disqualifying events be identified in statute, while aged out disqualifying events be identified in administrative rule.

**(5) Establish an appeals process for applicants who are denied employment because of the results of a background check; and**

The workgroup was hesitant to outline an elaborate appeals process noting that anything more than appealing the veracity of the record itself would add significant cost to the process. Members noted that a disqualifying event does not preclude an individual from working. The individual with the criminal background simply cannot work in one of these designated service areas. Some workgroup members disagreed on this point and wanted a process whereby anyone could appeal any disqualifier. Therefore, a two-step appeals process was identified.

The workgroup determined that if an individual disputed the facts of a background check, the appeal would be made to DOJ. This is a service that DOJ currently provides for individuals that dispute the results of the information on the background check report. This would pertain to individuals who dispute the fact that the information on the fingerprint check pertains to their criminal history. DOJ does have an appeals process whereby an individual can appeal the accuracy of the information.

The second part of the appeals process pertains to an applicant who agrees that the fingerprint check is correct, but believes that the applicant has been sufficiently rehabilitated to warrant the public's trust, or that the crime was the result of extenuating circumstances that can justify a reconsideration of the ability to work in these settings. At that point, an appeal would be made to DPHHS.

A proposed appeals process is contained in Attachment E. If enacted, the Department anticipates the need to convene an advisory council or workgroup to promulgate specific administrative rules regarding an appeals process. The process would include an administrative review of the file, including items for example as the Final Order and Judgment, a report from the probation officer, personal and professional references, etc. If the decision of this appeal was negative, the applicant could appeal to a formal review or Fair Hearings Process. A detailed account of the entire appeals process can be found at Attachment E.

**(6) Determine the estimated cost and sources of funding for implementing the system of criminal background checks outlined in the proposal.**

The workgroup discussed the financial impact that any change in current practice might have on employers. The workgroup believed that for a fingerprint based background check that the cost cannot be born entirely by the employer (providers). However, the workgroup also recognized that providers are currently incurring some costs to perform background checks on employees, and that amount is approximately \$10.00 - \$11.50 per check, to the extent that they are utilizing the services provided by DOJ for name-

based background checks. Some providers are paying more if they utilize private entities to conduct this service.

The workgroup also discussed the cost impact on prospective employees. For some types of employees, the cost could be shouldered by the prospective employee because of the related status of the position and the rate of pay; for other types of positions, such as nurse aides, the cost might discourage individuals from entering the field.

For this reason, the workgroup suggested a type of shared cost of the fingerprint process but cautioned the Department from proposing a process that puts the entire burden upon the employer. After considerable discussion it was determined to be reasonable that providers share in the cost of this public policy, but exclude prospective employees from the cost sharing. Therefore, for the purposes of this cost analysis this cost sharing amount was determined to be \$11.50 per fingerprint check.

Depending on the type of fingerprint background check (FBI or WIN), as mentioned earlier, the incremental cost after considering the employer cost sharing is \$38.50 (\$50.00-\$11.50) for an FBI check and \$19.25 (\$30.75-\$11.50) for a WIN check. The cost analysis contained in this study recognizes this cost sharing assumption and the general consensus of the workgroup members for this proposal that employers would not bear the entire cost of the program.

The cost analysis also recognizes the direction by the workgroup to include a discussion on the possibility of obtaining federal Medicaid matching funds for the cost of the fingerprint checks as well as the administrative costs to conduct the fingerprint check process. Several of the workgroup members stressed the importance of this federal Medicaid funding to the success of this proposal.

Based upon the analysis outlined in Attachment F of this report, Medicaid funding is possible for the cost of the fingerprint background checks but, according to the Centers for Medicare and Medicaid Services (CMS), the cost of the check must be incurred by the employer (provider). The costs would then be considered a cost of doing business and the provider could be reimbursed for these costs via the Medicaid rate setting methodology for the specific program or service, or an alternative reimbursement methodology could be developed that is based upon Medicaid utilization for the program or service. The key requirement according to CMS for federal Medicaid participation as a Medicaid benefit is that the provider would be responsible to pay the cost of the fingerprint background check. This requirement conflicts with the general consensus of the workgroup in their discussion to propose a fingerprint background check process.

As mentioned earlier the cost of this proposal is significant in the first two years of operation when background checks will be required. The cost of the fingerprint criminal background check is estimated to be approximately \$1.4 million in the first full year of operation and then reduced to approximately \$939 thousand in the second year. Administrative costs for DPHHS and DOJ are included in this figure and are estimated

to be \$431 thousand in the first full year of operation and \$440 thousand in the second year to cover program administration. Associated start up costs prior to the first years of operation is estimated to be approximately \$336 thousand. Medicaid matching funds are a possible source of funding to offset some of this cost and is estimated to be approximately \$261 thousand the first year and \$132 thousand the second year. This is based upon the assumption that the proposal includes a requirement for the provider to incur the cost of the background check. In addition, in order to obtain Medicaid matching funds it would require a significant level of effort by the state Medicaid program to establish a reimbursement methodology and obtain CMS approval.

Therefore, how the costs will be paid and who will pay for the fingerprint background checks has not been determined. A detailed analysis of the costs and potential sources of funding is contained in Attachment F.

### **Current Practice**

Licensed health care providers are required to show evidence through policies and procedures that they have some type of process in place to protect resident, patient, and client safety. The employer is held to what is in the policies and procedures, and thus, in some cases, the assurance to the public may be minimal.

Some health care facilities currently perform background checks including but not limited to criminal history, driving records, and credit checks. Employers have various resources available to them. Some use the DOJ resources for name based and fingerprint checks, while others rely on the services of private background check companies. Costs for these services vary from \$10 to \$100 depending on the type and source.

To get an idea of the scope to which providers conduct criminal background checks, DPHHS conducted a survey of providers in March and April 2008. There were approximately 250 responses. Of those that responded, 87% indicated that they perform some form of criminal background checks on applicants before employment. Over 59% of the respondents utilize a name-based check via the resources provided by DOJ, followed by 43.5% who do reference checks, and 34.7% who use a private background check service. Only 3.7% of respondents complete fingerprint background checks.

The results were almost evenly divided between employers that hire the applicant on a probationary basis, pending the results of a background check (51.4%) and those who delay hiring the applicant until a background check has been completed (48.6%).

### **The Options**

The workgroup discussed options related to the work completed on this issue. The proposal the workgroup identified and the basis for this study is for a criminal background check using fingerprints. Nothing would prohibit any employer from requiring an additional background check that exceeds whatever is mandated by the State. Additional types of checks might include driving records, credit checks, etc. The options are intended for new employees/applicants, but nothing would prohibit employers from requesting the checks to

be done on existing employees. Furthermore, nothing would prohibit existing employees from requesting a fingerprint check before they attempt to change jobs and subjected to the check.

A chart of all options considered by the workgroup is found at Attachment G.

### **Estimated Costs – Fingerprint Background Check**

The cost of a fingerprint criminal background check and related costs are estimated to be approximately \$1.4 million in the first full year of operations and then reduce to approximately \$939 thousand in the second year. Associated start up costs prior to the first years of operation are estimated to be approximately \$336 thousand. The first two years are significant to account for associated start up costs, process background checks on the existing workforce after considering grandfathering and workforce turnover, and new employees to the workforce. The costs are expected to reduce in year three to \$745 thousand and in year four to approximately \$730 thousand, and remain at that level or lower annually thereafter.

The majority of this cost includes an estimate of the cost of the background check. That cost is dependent on the type of fingerprint background check (FBI or WIN) that is utilized by the employer (\$38.50 (\$50.00-\$11.50) for an FBI check and \$19.25 (\$30.75-\$11.50) for a WIN check).

The SJ 7 workgroup has completed the tasks as outlined in the resolution and after careful consideration provides a proposal that meets the intent of the resolution to propose a program that requires fingerprint based criminal background checks. The authority that allows the State to implement a fingerprint based background check requirement for a noncriminal justice licensing or employment purpose is based upon federal law as contained in PL 92-544. This authority is identified in Attachment I from the DOJ, which outlines the authority provided under law to allow for FBI criminal record checks. The same law empowers the FBI to exchange identification records with officials or state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States.

Legislation would be necessary in order to implement a public policy for criminal background checks that allow criminal history information to be shared with providers. This report does not include proposed legislation to implement this requirement but it provides information and processes that are important in developing a public policy for Montana.

Based upon the work and the discussion of the Senate Joint Resolution 7 workgroup, a general consensus was reached that now is the time for a public policy on background checks to protect the health and safety of vulnerable people served in Montana. How that public policy is established and the method for background checks is an issue that is best determined by the legislature. This report addresses the critical issues regarding a criminal background check, specifically those involving a fingerprint based check that should be considered in developing a public policy.